

**REMARKS**

The applicants have carefully considered the Office action dated March 22, 2006, and the references it cites. In the Office action, claims 1-8 and 11-35 were rejected as unpatentable over various combinations of Scott (US Pub. No. 2002/0049760), Vigue et al. (US 6,983,326), Fanning (US 6,742,023), and Schleicher (US Pub. No. 2002/0138744) and claim 36 was allowed. New claims 37-44 have been added. In light of the forgoing amendments and the following remarks, the applicants submit that all pending claims are allowable and reconsideration is respectfully requested.

As an initial matter, clarifying amendments have been made to claim 36. As indicated in the Office action claim 36 is allowable. Therefore, claim 36 is not further discussed herein.

Claim 1 recites a method comprising, *inter alia*, comparing a connection speed of at least one of the servers from a list of servers to an available bandwidth of the client and selecting one of a plurality of downloading systems based on the comparison. None of the art of record teaches or suggests such a method.

While Scott is directed to a technique for accessing information in a peer-to-peer network, Scott does not describe or suggest comparing a connection speed of at least one of the servers to an available bandwidth of the client. While Scott compares a connection speed from one peer location to a connection speed from another peer location, Scott does not compare the download speed from one peer location to the bandwidth (e.g., the client's connection speed to the network) available to the client. Therefore, Scott does not teach or suggest the method of claim 1.

Vigue does not overcome the deficiencies of Scott. For example, Vigue does not describe or suggest comparing a connection speed of at least one of the servers to an available bandwidth of the client.

Fanning also fails to overcome their deficiencies. For example, while Fanning describes a method including connecting to two download servers to request a file allowing a high-bandwidth file transfer client to download files from several lower bandwidth servers. (Col. 8, lines 7-20), Fanning does not describe or suggest comparing a connection speed to at least one of the servers to an available bandwidth of the client to select a download system as recited in claim 1.

Schleicher also fails to overcome the deficiencies of Scott. While Schleicher describes a method including determining from a list of client nodes, the node closest to a client requesting a file download, Schleicher does not describe or suggest comparing a connection speed to at least one of the servers of an available bandwidth of the client.

Accordingly, because none of Scott, Vigue, Fanning, or Schleicher describes or suggests a method including comparing a connection speed to at least one of the servers to an available bandwidth of the client, no combination of Scott, Vigue, Fanning, or Schleicher can describe or suggest such a method. Therefore, for at least the forgoing reasons, claim 1 and all claims depending therefrom are patentable over Scott, Vigue, Fanning, and Schleicher.

Claim 15 recites, *inter alia*, a method comprising comparing the connection speed of at least one of the servers on the list of servers to an available bandwidth to the client. As discussed above, no combination of Scott, Vigue, Fanning, or Schleicher describes or suggests such a method. Therefore, claim 15 and all claims depending therefrom are patentable over Scott, Vigue, Fanning, and Schleicher.

Claim 25 recites, *inter alia*, a method comprising comparing the connection speed to at least one of the peer servers to an available bandwidth to the first peer. As discussed above, no combination of Scott, Vigue, Fanning, or Schleicher describes or suggests such a method. Therefore, claim 25 and all claims depending therefrom are patentable over Scott, Vigue, Fanning, and Schleicher.

Claim 37 recites, *inter alia*, a method comprising determining a first metric associated with a connection between the client and the first peer, determining a second metric associated with a connection between the client and the network, and comparing the first metric to the second metric. No combination of Scott, Vigue, Fanning, or Schleicher describes or suggests such a method. In particular, while some of the references describe determining a first metric associated with the connection between the first peer and the client (e.g., determining a connection speed), none of the cited references describe or suggest comparing a metric associated with the connection between the first peer and the client with a metric associated with the connection between the client and the network. Therefore, claim 37 and all claims depending therefrom are patentable over any combination of Scott, Vigue, Fanning, and Schleicher.

In view of the foregoing, the applicants respectfully submit that all claims of this application are now in condition for allowance.

Before closing, the applicant notes that at least the following amendments are either broadening or clarifying and, thus, not necessary for patentability:

1. The deletion of the phrase "step (d) further includes the step of: d1) selecting a multiple concatenated download system" and the addition of the phrase "the one of the plurality of downloading system is a multiple concatenated download system."
2. The deletion of the phrase "step (d) further includes the step of: d1) selecting a serial concatenated download system" and the addition of the phrase "the one of downloading systems is a serial concatenated download system."
3. The deletion of the phrases "wherein step (d)", and "includes the step of" and the addition of the word "comprising"; the deletion of "d1)" before the word "determining", the deletion of "a" after the word "determining and the addition of the word "the"; the deletion of the word "to" after "speed" and the addition of the word "of".
4. The deletion of the phrase "step (a)" and the addition of the phrase "initiating the broadcast search from the client on the per-to-peer network"; the deletion of the phrase "includes the step of" and the addition of the word "comprises"; the deletion of "a1)".
5. The deletion of the phrases "step (a)" and "includes the step of:" and the addition of the phrases "initiating the broadcast search from the client on the peer-to-peer network" and "comprises"; the deletion of "a1)".
6. The deletion of the phrases "step (b)" and "includes the step of" and the addition of the phrases "receiving the list of servers" and "comprises:"; the deletion of "b1)".
7. The deletion of the phrases "step (b)" and "includes the step of" and the addition of the phrases "receiving the list of servers" and "comprises:"; the deletion of "b1)".
8. The deletion of the phrases "step (b)" and "includes the step of" and the addition of the phrases "receiving the list of servers" and "comprises:"; the deletion of "b1)".

9. The deletion of the phrases “step (b)” and “includes the step of” and the addition of the phrases “receiving the list of servers” and “comprises;”; the deletion of the phrases “b1)” and “a server” and the addition of the phrase “at least one of the servers” after the word “at”.

10. The deletion of the phrases “step (a)”, “including the step of”, and “a1)” and the addition of the word “comprising after the word “further”.

11. The deletion of the phrases “step (c)” and “includes the step of” and the addition of the phrases “receiving the list of servers” and “comprises;”; the deletion of “c1)”.

12. The deletion of the phrases “wherein step (d)” and “includes the step of” and the addition of the word “comprising”, after the word “further”; the deletion of “d1)”, the word “a” after “measuring”, the phrase “a plurality of servers” and the “;” and the addition of the word “the” before “connection”, and the phrase “the at least one of the servers on the list of servers” after the word “to”; the deletion of the phrase “d2) comparing the connection speed of the plurality of servers to an available bandwidth to the client.”

13. The deletion of the phrases “step (c)” and “includes the step of” and the addition of the phrases “determining one of the plurality of downloading systems” and “comprises”; the deletion of the “c1)” and the addition of the phrases “of the client” after the word “bandwidth” and “on the list” after the word “servers”; the deletion of “c2)” and the addition of the phrases “of the client” after the word “bandwidth” and “the” before the phrase “two of the servers”.

14. The deletion of the phrase “including the steps of”, and “a1)” and the addition of the word “comprising” after the word “further”; the deletion of “c3)” and the addition of the word “the” before the phrase “two of the servers”.

15. The deletion of the phrase "including the steps of" and the addition of the word "comprising" after the word "further"; the deletion of "c3)" and the addition of the word "the" before the phrase "two of the servers".
16. The deletion of the phrases "step (c3)" and "includes the steps of" and the addition of the phrase "selecting the multiple concurrent download system"; the deletion of the phrases, "i)" and "of the"; the deletion of the phrases, "ii) and "at least two of the"; the deletion of the words "for" and "servers" and the addition of the words "from" and "server".
17. The deletion of the phrases "step (c3)" and "includes the steps of" and the addition of the phrases "selecting the multiple concatenated download system" and "comprises"; the deletion of the phrases "i)", "for one" and "at least", and the addition of the phrase "from a first one" after the word "file"; the deletion of the phrases "ii)", "for" and "at least" and the addition of the words "from", after the word "file" and "one" after the word "second"; the deletion of "iii)".
18. The deletion of the phrases "step (c)" and "includes the steps of" and the addition of the phrases "selecting one of the plurality of downloading systems" and "comprises"; the deletion of the words "c1)", and "a" and the addition of the word "the" after the word "determining"; the deletion of the words "c2)" and "speeds" and the addition of the word "determined" before the word "connection".
19. The deletion of the phrases "step (c1)" and "includes the steps of" and the addition of the phrases "determining the connection speed to each of the peer servers on the list of peer servers" and "comprises"; the deletion of the words "i)" and "receipt".
20. The deletion of the phrases "step (c1)" and "includes the steps of" and the addition of the phrases "determining the connection speed to each of the peer servers on the list of peer servers" and "comprises"; the deletion of "i)".

21. The deletion of the phrases "step (d)" and "includes the steps of" and the addition of the phrases "downloading the file using the one of the plurality of downloading systems" and "comprises"; the deletion of the phrases "d1)", "an", "a" after the word "than" and "a" after the word "times" and "d2)" and the addition of the word "the" after "when" the" after "times" and "and" after "speed;".

22. The deletion of the phrases "29" and "including the steps of" and the addition of the phrases "30" and "comprising"; the deletion of the phrases "d3)" and "was downloaded" and the addition of the phrase "download was completed"; the deletion of the phrases "d4)" and "was downloaded" and the addition of the phrase "download was completed"; and the deletion of "d5)" and "d6)".

23. The deletion of the phrases "the step d)" and "includes the steps of" and the addition of the phrases "downloading the file using the selected one of the downloading systems" and "comprises"; the deletion of the phrases "d1)", "a" after the word "than", and "a" after the word times" and the addition of the phrases "the" after the word "times" and "to at least one of the peer servers" after the word "speed".

24. The deletion of the phrases "including the steps of" and "comprising"; the deletion of the phrases "d3)", "d4)", and "a rest of the" and the addition of the word "remaining" before the word "downloads".

25. The deletion of the phrases "the step (d)" and "includes the steps of" and the addition of the phrases "downloading the file using the one of the plurality of downloading systems" and "comprises"; the deletion of the phrases "d1)", "a" after the word "than", "a" after the word "times" and "d2)" and the addition of the phrases "the" before the word "connection" and "to at least one of the peer servers" after the word "speed".

26. The deletion of the phrases "including the steps of" and "d3)".

27. The deletion of the phrases "the steps of", "a)", "b)", "c)", "d)", "e)", the word "a" after the phrase "available bandwidth is less than", ";" after the phrase "connection speed" and the addition of ":" after the phrase "connection speed"; the deletion of the phrases "f)", "g)", "h)", and "," after the word "downloaded" and the addition of ":" after the word "downloaded"; the deletion of the phrases "'i)", "j)' "k)" and the word "a" after the phrase "less than" and "," after the phrase "connection speed" and the addition of ":" after the phrase "connection speed"; the deletion of the phrases "l)", "m)", and "n)".

The above noted amendments are either broadening, or are merely clarifying in that the amended claims are intended to state the same thing as the claim prior to amendment (i.e., to have the same scope both before and after the amendments) in a more easily understood or more conventional fashion. Consequently, these broadening or clarifying amendments do not give rise to prosecution history estoppel or limit the scope of equivalents of the claims under the doctrine of equivalents.

If there are any remaining matters that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,

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